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ADVISORY SERVICES IN THE FIELD OF HUMAN RIGHTS

Report of the Special Representative of the Secretary-General, Mr. Michael Kirby, on the situation of human rights in Cambodia submitted pursuant to Commission on Human Rights Resolution 1993/6

Addendum*

* The present document contains the conclusions and recommendations of the Special Representative of the Secretary-General on the situation of human rights in Cambodia following his first mission to the country from 21 to 28 January 1994. The first part of his report will be issued subsequently as document E/CN.4/1994/73.

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CONCLUSIONS AND RECOMMENDATIONS OF THE SPECIAL REPRESENTATIVE OF THE SECRETARY-GENERAL ON THE SITUATION OF HUMAN RIGHTS IN CAMBODIA FOLLOWING HIS MISSION TO CAMBODIA FROM 21 TO 28 JANUARY 1994

A. Conclusions

1. The Special Representative wishes to express his sincere appreciation to the Royal National Government of Cambodia for the full cooperation received during his mission, in particular in facilitating visits to various institutions such as prisons, courts and hospitals.

1. Important progress towards a civil society

2. Important progress in the respect for, and the protection of, human rights has been achieved in a comparatively short time. This is particularly so when considered against the background of the recent history of Cambodia which witnessed the terrible suffering of its people and grave derogations from basic human rights. Such progress includes:

(a) The Paris Peace Agreements of 1991;

(b) The creation of the Kingdom of Cambodia and the Proclamation of His Majesty Norodom Sihanouk Varman as King;

(c) The adoption of the Constitution embodying human rights provisions;

(d) The conduct of elections which were accepted as free and fair;

(e) The establishment of a representative, national coalition government; and

(f) The beginning of the process of building a civil society by:

(i) Strengthening the functioning of the National Assembly;

(ii) Establishing the Commission on Human Rights of the National Assembly;

(iii) Enactment of laws including adoption of Transitional Provisions (relating to the judiciary and criminal law) and their partial enforcement;

(iv) Training of officials involved in the administration of justice, including judges, prosecutors, law enforcement and prison officials;

(v) Improvement in the functioning of some courts;

(vi) Establishment of the Office of Defenders and their Association;

(vii) Creation and multiplication of NGOs;

(viii) Strengthening of systems of education, including universities, and health facilities;

(ix) Enabling greater freedom of movement;

(x) Facilitating the rights to peaceful assembly and demonstration; and

(xi) Growth of a free press.

2. The persisting problem of security which challenges human rights

3. Nevertheless, major problems remain. Most serious is the problem of security and instability caused by non-participation of the Party of Democratic Kampuchea (Khmer Rouge) in the process towards democratic government in Cambodia. This has led to an escalation of military confrontation between the democratically elected Government and the elements of the Khmer Rouge. Problems include:

(a) Laying of mines in large numbers (reportedly by all parties to the conflict) threatening the right to life, food, health, and limiting the freedom of movement throughout the country;

(b) Support for the Khmer Rouge either explicitly or tacitly by elements in foreign countries, especially the military. The Khmer Rouge could not survive without such support;

(c) Unjust treatment reportedly meted out to some Khmer Rouge defectors who have surrendered to government forces in answer to the call of the two Prime Ministers;

(d) Ready availability of mines, grenades and other weapons in markets throughout Cambodia;

(e) Reported abuse of power by some military and police, including threats to the right to life;

(f) Lack of effective and just means of resolution of complaints by civilians against military and police;

(g) Undermining and destabilizing the civil society because of an atmosphere of fear, and the resulting resistance to concepts of human rights amongst some members of the public;

(h) Diversion to the armed forces of scarce resources needed to provide for and safeguard economic, social, cultural, civil and political rights; and

(i) Failure to render accountable those responsible for major human rights violations, including those in power during successive regimes since 1970, responsible for war crimes, crimes against humanity and the crime of genocide.

3. The destruction of the infrastructures for the enforcement and realization of human rights

4. Other basic problems arise from the almost total destruction in the last 20 years of the infrastructures of a civil society necessary to realize and protect human rights and fundamental freedoms. Such problems include:

(a) Destruction of the health system. Many hospitals lack clean water, reliable electricity, pharmaceutical and other basic equipment and trained personnel. In addition, the sale of pharmaceuticals is not regulated in accordance with international health safeguards and those available are often false or beyond the date of effectiveness;

(b) Gross disruption of the education system. This was due to the closure or non-functioning of primary and secondary schools and the disorganization of the universities during 20 years of war, as well as the persecution of teachers, professors and other intellectuals during 1975 to 1978;

(c) Gross disruption of the economy and the social fabric caused by the total reorganization of the agricultural production, the destruction of the market system, 20 years of wars and international isolation of the country. This has led to widespread and unacceptably high levels of unemployment, prostitution, currency destabilization, inflation and internal displacement of the population; and

(d) Disruption of the justice system: after 20 years of war, the country has been deprived of the rule of law. The deprivations are still serious, evidenced by the lack of basic texts and the absence of a strong and independent judiciary which is properly trained and adequately paid. Cambodia also lacks military and police services, properly trained and which see their roles as the protectors of basic rights.

4. The approach adopted by the Special Representative and response of the Government

5. In implementing the mandate entrusted to him by the Commission on Human Rights, the approach of the Special Representative is and will be to be supportive of the Cambodian Government in implementing its international human rights obligations. He intends to assist in providing the necessary advisory services and technical assistance to reinforce the Government's efforts to uphold the rule of law and to build the necessary infrastructures for the promotion and protection of human rights.

6. As required by his mandate, the Special Representative intends to have regular contacts with the people of Cambodia. Within this context, during his first visit he had extensive consultations with Cambodian NGOs and also visited prisons and other national institutions in Phnom Penh and Battambang. He made extensive use of the mass media to reach out to larger segments of the Cambodian population. In future missions he intends to visit other provinces in order to assess the human rights situation in all parts of the country.

7. He intends to have regular consultations with relevant international bodies and to assist in coordinating the work of the United Nations in human rights activities in Cambodia. He will also maintain contacts with interested Member States.

8. The response of the Royal National Government of Cambodia has been fully cooperative. The Special Representative has received the full support of the Royal Government, in particular of His Royal Highness the First Prime Minister, Prince Norodom Ranariddh Varman, and His Excellency, the Second Prime Minister, Mr. Hun Sen. He met with most senior Ministers and high-ranking officials of the government responsible for the implementation of human rights matters at the national and provincial levels. The Government facilitated for the Special Representative a number of visits to courts, a hospital, a university and a prison and in the prison enabled private discussions with detainees.

9. The focus of the Special Representative's activities is to encourage and assist in implementing the programme of activities elaborated by the Office of the Centre for Human Rights in Cambodia. In this context he is particularly supportive of the activities already initiated in the areas of institution-building, training, legislative drafting and assistance in reporting obligations under the international conventions to which Cambodia is a party. He wishes to emphasize to the Commission that the activities of the Office should not be restricted to Phnom Penh, but to be effective, must reach out to the provinces of Cambodia.

10. The Special Representative welcomes the establishment of the Human Rights Commission of the National Assembly. Taking into account the Cambodian context, in particular the absence of a fully established and independent judiciary, the Human Rights Commission is a vital institution for the promotion and protection of human rights, to supplement the effects of other institutions, including the courts.

11. The Special Representative supports and encourages the efforts of NGOs and other citizens involved in human rights activities in Cambodia.

5. The priority areas requiring urgent attention

12. The areas of activities which require urgent attention include:

(a) The devotion of proper resources for hospitals, schools, courts and for the defence of cultural treasures, especially Angkor Wat;

(b) The support of the National Assembly Human Rights Commission including financial assistance for a proper secretariat, equipment and training;

(c) The enactment of laws and related activities in specially urgent areas, for example:

(i) Establishment of the Constitutional Council;

(ii) Establishment within the administration of justice of the Supreme Council of Magistracy, a Court of Appeal and a functioning Supreme Court;

(iii) Enactment of the reformed land law;

(iv) Enactment of migration and citizenship laws;

(v) Enactment of a press law, guaranteeing free expression and to replace the State of Cambodia (SoC) law;

(vi) Enactment of a law guaranteeing peaceful assembly and demonstration to replace State of Cambodia (SoC) law; and

(d) The implementation of training programmes aimed at the promotion and protection of civil rights:

(i) Training police and military in their role in implementing relevant constitutional provisions and human rights;

(ii) Training of lawyers in relevant constitutional provisions and human rights;

(iii) Training of judges in relevant constitutional provisions and human rights; and

(iv) Training of citizens, through the media and schools, in relevant constitutional provisions and human rights;

(e) Ensuring true independence of the judiciary by guaranteeing:

(i) Proper salaries;

(ii) Enforcement of the requirements of independence;

(iii) Neutral conduct of trials; and

(iv) Open conduct of trials.

B. Recommendations

1. Right to health

13. There is an urgent need to upgrade the infrastructure and delivery of health services in Cambodia. Many, possibly most, health workers need to be retrained and their skills upgraded. Equipment, supplies and drugs that meet international standards need to be made available and better allocated and managed to reduce mortality, particularly resulting from malaria and tuberculosis. More funding is required from the central level to the provinces, districts and communes to strengthen the public health sector in its provision of basic health care to the people.

14. The Ministry of Health should continue its efforts towards a more centralized health system. The assistance of WHO and UNDP in this regard should continue and where possible, be supported by other United Nations agencies, bilateral assistance and NGOs.

15. The Ministry of Health, with international assistance, should continue its efforts to develop programmes for the prevention of crippling diseases and illnesses. Adequate services for the rehabilitation, care and training of handicapped and disabled, including victims of land-mines, should be developed.

16. Priority should be given by the Government of Cambodia to public health campaigns to provide education concerning the use of safe water. Such campaigns should also address the prevention of the transmission of HIV/AIDS and the dangers of the spread of cigarette smoking in the Cambodian population.

2. Cultural rights

17. The right of Cambodians to enjoy the cultural heritage of Angkor Wat is threatened by looting of monuments and archaeological sites, and by illicit international traffic in Khmer treasures. A comprehensive plan for zoning and environmental management of the Angkor site needs to be immediately implemented and strictly enforced.

18. Member States must make greater efforts to prevent illicit trafficking in Khmer artifacts. The Special Representative therefore calls on all nations, and particularly countries in the region, to ratify and effectively implement the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (ratified by Cambodia on 26 September 1972)

3. Education, in luding legal education

19. There is an urgent need to reinforce the infrastructure of Cambodian primary and secondary education to ensure universal literacy and the opportunity for advancement in society. It is already clear that the current levels of enrolment and retention in schools will delay the rebuilding of the Cambodian economy and thereby retard the establishment of the conditions in which human rights will flourish and be secure. The highest priority should therefore be given to the reopening of schools, the building of new schools, the training of teachers, the education of large numbers of the population in at least one language in addition to Khmer, and the assurance of equal opportunity in education for vulnerable groups.

20. The Ministry of Education should proceed, as a matter of priority, with its plan to collect and publish statistics on the number of children at every level of education, showing a breakdown of the number of female students. The statistics should also provide data on educational retention so that trends, needs and priorities may be monitored by the Ministry, the Cambodia office of the United Nations Centre for Human Rights, the United Nations agencies (including UNESCO and UNICEF) and other interested organizations.

21. The Faculty of Law and Economics of the University of Phnom Penh should, without delay, consider the inclusion in its curriculum of courses in applicable constitutional and international human rights law for the training of lawyers, both in the preparatory and subsequent years. Such courses should not be confined to the study of the human rights law of any particular country but should be carefully designed having regard to:

(a) The Constitution of Cambodia and its provisions for the protection of fundamental human rights;

(b) The other laws of Cambodia relevant to human rights;

(c) The provisions of international human rights instruments to which Cambodia is a party; and

(d) Other relevant international law and practice.

22. The Cambodia office of the United Nations Centre for Human Rights should offer its assistance to the Faculty of Law and Economics by:

(a) The provision to the Faculty of human rights and other texts, including those translated into Khmer; and

(b) The arrangement of workshops for students and staff in relevant legal principles. At least one such workshop should be organized by the Cambodia office of the United Nations Centre for Human Rights during 1994 to which staff and students of the Faculty should be invited.

23. In the event that a second school of law is established in Cambodia, the Cambodia office of the United Nations Centre for Human Rights should make contact with those responsible for the design and content of the curriculum in that school to ensure that it integrates relevant constitutional and international human rights law into its courses.

24. The system currently followed in the Faculty of Law and Economics in Phnom Penh results in the elimination of large numbers of students at the end of the preparatory year following matriculation. Consideration should be given by the Faculty of Law and Economics, in consultation with the Cambodia office of the United Nations Centre for Human Rights, to avoid such wastage and allow at least some of the students who have been eliminated after the preparatory year to be awarded a diploma or a certificate of legal studies. For many years in the future there will be a shortage of trained judges and lawyers in Cambodia. The need for paralegals to perform work in relation to the assistance of persons before the courts, tribunals, commissions and other bodies in Cambodia could be met in part if some qualification, short of a full legal degree, were recognized. Such qualification should include basic instruction in constitutional and international human rights law.

25. The proposal of the First Prime Minister, HRH Prince Norodom Ranariddh Varman, for general human rights information and education is strongly endorsed. The Cambodia office of the United Nations Centre for Human Rights should explore with the First Prime Minister's office ways in which members of the Government, from all political parties, could be involved in this process.

The distribution of simplified information in Khmer, and in languages of ethnic minorities living in Cambodia, concerning the constitutional principles and human rights standards should be encouraged by the Cambodia office of the United Nations Centre for Human Rights. In this work, the Cambodia office should cooperate closely with the Government, media and relevant NGOs. Special attention should be paid to the introduction of human rights education in:

(a) General schooling, both at primary and secondary levels; and

(b) Education of relevant specialized groups, such as members of the National Assembly, judges, prosecutors, police, military, prison officials and other public officials.

4. Judicial independence and the rule of law

26. A code of judicial practice or other law should be adopted providing for the effective assurance of judicial independence and integrity in Cambodia. Such a law should provide:

(a) That judges should not consult or have contact with any ministerial official concerning particular cases, except in open court and with the approval of both parties or their representatives. The alleged practice of judges consulting with the Ministry of Justice in private about the determination of cases either before, during or after trial should cease forthwith;

(b) That judges should not accept any gift, present, gratuity or benefit of any kind from, or on behalf of, any litigant in their court whether before or after decision. A gift before decision which may influence the decision deprives a party of the fundamental human right to be judged by a manifestly independent and impartial tribunal, and may amount to corruption. A gift after decision, even if it did not influence the decision, may create an impression in the losing party and the community that the judge was influenced by the hope or prospect of such a benefit;

(c) A procedure which is just to the complainant and the judge for the investigation of complaints against judges in respect of the performance of their judicial duties; and

(d) A procedure for the removal from office of judges found, by appropriately stringent standards, to be guilty of corruption or misconduct in a way relevant to their office or found to be suffering from a proved incapacity to perform judicial functions.

27. The present salaries of judges of municipal and provincial courts (reported to be US$ 20 per month) are wholly inadequate. They do not provide sufficiently for the sustenance and support of a judge and his/her family. Such low salaries make it almost impossible for judges to be independent. They expose judges to the temptation of corruption and the necessity to rely upon gifts, etc. which are incompatible with judicial office. Means should urgently be found to provide judges in Cambodia with salaries and other benefits of office sufficient to remove the exposure of judges to temptations

of corruption. Such means would serve to recognize the difficulty and importance of the work of judges in building a society based on the rule of law. Without an incorruptible judiciary, the rule of law will not take root in Cambodia.

28. All Cambodian judges should be supplied, upon appointment, with:

(a) Copies of the Constitution of Cambodia, the international human rights instruments to which Cambodia is a party and other relevant materials, in Khmer and in any United Nations official languages as desired; and

(b) Copies, in Khmer and any United Nations official languages as desired, of the relevant principles for the independence of the judiciary, including the Basic Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan, Italy in 1985 and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985 and the draft declaration on the independence of justice.

29. The Cambodia office of the United Nations Centre for Human Rights should continue to cooperate with the judiciary in the facilitation of:

(a) Translations into Khmer of basic texts, including the above;

(b) Workshops for the instruction and updating of judicial education on basic constitutional and human rights law; and

(c) Supplies to courthouses throughout Cambodia of basic texts and relevant information. The possibility of a human rights newsletter for the judiciary, Government and NGOs should be considered, if funds permit.

30. The judiciary cannot perform its high constitutional function without proper salaries, facilities, equipment, staff and other resources. Judges complained to the Special Representative about the lack of rudimentary resources, including the paper necessary to record judicial decisions. Such facilities should be provided without delay.

31. The recommendation of the seminar on administration of justice for senior officials nominated by the Ministries of Justice and the Interior, organized by the Cambodia office of the United Nations Centre for Human Rights, 11-17 January 1994, that the courts be given appropriate budgetary allocations for their functions, is strongly endorsed. The Cambodia office of the United Nations Centre for Human Rights should also explore ways in which the equipment and basic facilities available to judges could be improved without delay and make recommendations to this end for a later report by the Special Representative.

32. The Cambodia office of the United Nations Centre for Human Rights, in discussion with the Supreme Council of Magistracy, once established, should explore with the Ministry of Justice the feasibility of implementing a scheme of judicial mentors. Under such a scheme, judicial officers from other countries with a tradition of incorruptibility and independence could participate as resource persons in judicial chambers. They could also work

with relevant ministries, officials involved in the legal system and NGOs, by providing advice and information on analogous solutions from their countries and by drafting legal documents, codes of practice, etc.

5. Fair and open trial

33. The judiciary and the relevant ministries should take steps to ensure that:

(a) Article 13 of the Transitional Provisions providing for the bringing of every accused person before a judge within 48 hours of arrest should be strictly enforced;

(b) Article 10 of the Transitional Provisions should be strictly enforced to ensure that no person held in custody is denied the assistance of legal representation for a long period. Administrative arrangements should be made without delay to provide all persons in prisons with a notification of their rights and of practical ways of taking advantage of them;

(c) Article 17 of the Transitional Provisions should be strictly enforced so that the accused's defender can, without delay and as of right, without need of special or additional permission of a judge or any other person, have access to the accused's file. Consideration should be given to enlarging this right to permit the defender, at reasonable times upon reasonable notice in confidential circumstances, to have access to the client held in custody for instruction and the preparation of the person's trial or appeal;

(d) The provisions of Article 14 of the Transitional Provisions should be strictly enforced so that no person's pre-trial detention exceeds four months. If the trial cannot be brought on in this time, the accused must be admitted to bail or released. Arrangements should be made by the judiciary for:

(i) Priority of hearing to be given to cases where the accused confesses to the crime charged and must appear only for sentencing;

(ii) Priority of hearing to be given to simple contested cases ready for trial;

(iii) Priority of hearing to be given to urgent cases including accused persons who are juveniles, first offenders, persons charged with minor offences, pregnant women, mothers of young children, offenders who are sick or old or otherwise deserving of priority. Systems for the monitoring of cases should be established to ensure equitable treatment of cases under investigation and awaiting hearing;

(e) The notification to prisoners of the likely time for the hearing of their proceedings with due notice prior to the assigned date of trial or appeal;

(f) The equality of treatment in examination of witnesses on behalf of the accused as well as the prosecutor. The reported practice of permitting the latter when denying the former must cease. The accused must be permitted, where it is relevant, to examine orally those who make the accusation;

(g) The accused must be afforded the opportunity of being tried with a defender in the presence of the witnesses called against him or her. In the absence of informed consent on the part of the accused, a criminal trial or appeal may not be conducted based solely on documentation received by the judge from the police or the prosecutor. The judge must hear both sides before deciding the case. The accused and/or the defender must be given the opportunity to be heard before any decision is made on whether the accusation has been proved and before any sentence is imposed;

(h) Judges must not consult officers of the Ministry of Justice or any other person or body while a case is before them. This practice must cease immediately, since it is incompatible with judicial independence. If necessary, the judge might request assistance from the Ministry to be given in open court in the presence of the accused and any defender and subject to a right of contradiction and comment by any party to the proceedings;

(i) In civil cases, litigants should be allowed by courts, as a matter of practice, to have the facility of legal advice and to have a civil consultant. The reported resistance to this facility on the part of the courts and the Ministry of Justice should cease; and

(j) All trials and appeals should be conducted in open court, in the presence of the accused. The media should be allowed access to such trials so that judges, whilst judging, may also be judged by the community for their lawfulness and fairness - both for their conduct of proceedings and for their decisions. Any derogations from the open administration of justice should be strictly limited, provided by law and ordered in public only for reasons given at the time. The reported practice of confining those allowed to attend some courts in Cambodia to those holding an invitation or summons from the court should be discontinued.

34. The foregoing are already provided by the laws of Cambodia. However, there have been many reported derogations. The reports appear to be reliable. It is highly desirable that, without delay, practice in Cambodia be brought in conformity with the laws and international human rights standards. The Cambodia office of the United Nations Centre for Human Rights should cooperate with the courts and the relevant ministries towards this end.

6. New laws: necessary practices

35. The Royal National Government of Cambodia should give priority to introducing laws - and the National Assembly to the enactment of laws - conforming to international human rights laws for the:

(a) Establishment of the Constitutional Council as envisaged by the Constitution, to facilitate constitutional review of bills and laws;

(b) Establishment of the Supreme Council of Magistracy as envisaged by the Constitution;

(c) Clarification of the rights and obligations of judicial independence;

(d) Creation/strengthening of the right to judicial remedies, in particular, the right to be physically produced in a court to be subject to the court's order (habeas corpus);

(e) Assurance of fair, neutral and just trials of criminal and civil cases in the courts;

(f) Efficient and just determination of disputed cases of claims to nationality and citizenship of Cambodia;

(g) Protection of freedom of the press and other media with due regard to proper restrictions necessary to uphold other basic human rights (e.g. reputation, privacy, freedom from discrimination);

(h) Protection of the rights of peaceful assembly, demonstration and the peaceful expression of views on political, social and like questions;

(i) Privileges and duties of non-governmental organizations established for social or charitable objectives, including for the advancement and defence of human rights;

(j) Just and peaceful resolution of land claims having regard to the need to remove:

(i) Uncertainties as to the ownership and right to possession of land as a result of decades of war and civil strife and competing claims; and

(ii) Risks of oppression, abuse of power and favouritism in the allocation of land amongst competing claimants and local authorities; and

(k) Establishment of a system of land registration and title, and assistance to that end by countries with such systems, is especially recommended having regard to the large number of such land disputes and the potential which they provide, if not quickly and justly resolved, for the rise of persisting conflict and lawlessness.

36. Upon the establishment of the Supreme Council of Magistracy, the Council should proceed without delay to the appointment of the members of the Court of Appeal in order to begin clearing the backlog of outstanding appeals awaiting hearing.

37. Rules of Court and practice guidelines should be made and other laws enacted providing for:

(a) The efficient and just conduct of the business of the courts;

(b) The ongoing training of judges including in relevant constitutional and human rights law;

(c) The provision of a right of audience to qualified members of the legal profession and other persons before the courts of Cambodia together with the duties, privileges and immunities of such persons; and

(d) The curricula for university and other courses for the training of members of the legal profession and others with rights of audience. Such curricula should include instruction in relevant constitutional and international human rights law.

38. As a matter of general practice, the drafting of laws should follow a transparent procedure, particularly at this phase of lawmaking in Cambodia where so many important laws must be drafted and enacted in a comparatively short time. The secret preparation of laws reduces the opportunity of NGOs, academics, other interested groups, individuals and the Cambodia office of the United Nations Centre for Human Rights, to make submissions and contributions to the form and content of laws having relevance to fundamental human rights. Upon the presentation of draft laws to the National Assembly, having relevance to human rights, such draft laws should be:

(a) Referred to the Human Rights Commission of the National Assembly for review of conformity with constitutional and international human rights law; and

(b) Provided to the relevant NGOs, academics, other interested groups, individuals and the Cambodia office of the United Nations Centre for Human Rights, for comment.

39. Such comment should be taken into account by the Government and the National Assembly in the consideration of such laws before final enactment and for the revision of such laws once enacted.

7. The police and military

40. The Cambodia office of the United Nations Centre for Human Rights, in cooperation with the Ministries of the Interior and Defence, should institute courses and reform of the current curricula of the armed forces and police of the Kingdom of Cambodia to ensure:

(a) A basic understanding of the requirements of the Cambodian Constitution and other laws, and of international human rights obligations accepted by Cambodia; and

(b) An appreciation of the vital role of the police and the military as protectors of basic human rights under the law and as guardians of the Constitution adopted for its people by the democratically elected members of the Constituent Assembly and proclaimed by His Majesty the King.

41. To supplement the remedies already provided by law, particularly judicial remedies, an independent complaints office should be created in addition to internal mechanisms that are already in place. Such an office should be

furnished with appropriate resources, held by a person of unquestioned integrity, and empowered to receive, investigate and quickly act upon complaints by persons in Cambodia concerning unlawful, unfair, oppressive or unreasonable conduct by any member of the police, military, prison system or other government service in Cambodia.

42. In addition to other legislation that may be in place, a law should be enacted governing the use of firearms by officers of the police and the military. Such law should regulate:

(a) The issuance, logging, return and secure deposit of firearms;

(b) The limited circumstances in which they may be used in relation to the civilian population - including the definition of the serious cases in which it is justified to use firearms against unarmed civilians in accordance with the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the United Nations;

(c) The need for warnings prior to use, including the use of warning shots;

(d) The provision of a full report after use;

(e) The provision of evidence in relation to use; and

(f) The provision of a complaints mechanism for investigating the alleged abuse of the use of firearms by officials and breach of the law.

B. Prisons and other custodial detention

43. A system of scrutiny of prisons and the detainees therein should be initiated for Cambodia and a law should provide for:

(a) The monthly **delivery** by the head of each prison to the head of the judiciary in each province of a full list of all prisoners held in custody showing the date of original incarceration, the offence(s) charged or established, the length of detention, the date or estimated date of trial or sentence (if still to be conducted) and details of any prisoners discharged or removed from the prison in the month under report, including any prisoners who have died in custody;

(b) In the case of deaths in custody, a full medical report should be provided specifying the cause(s) of death;

(c) Regular visits to the prison by members of the judiciary to hear and determine:

(i) Complaints of offences against prison discipline on the part of prisoners;

(ii) Complaints by prisoners about their treatment in prison or the lawfulness of their detention.

44. The maintenance of unauthorized prisons or places of involuntary custody not provided for by law, whether by the military or police or other authorities, should be forbidden and steps taken without delay to close any such prisons or places of custody.

45. The law should provide for the dismantling or conversion of dark cells and the destruction of shackles and other instruments of inhumane treatment or punishment.

46. Defenders and other authorized representatives of prisoners held in custody should be entitled by law:

(a) At reasonable times without any special judicial order to have access to a prisoner held in custody, without the presence of custodial staff, to discuss with the prisoner the defence of the prisoner whether at trial or on sentence or the prosecution of an appeal or application for review following conviction and sentence; and

(b) To notify a particular prisoner or prisoners in general of the facilities provided for the defence of prisoners or the timely prosecution of appeals.

47. The law should provide that authorized members of NGOs should have regular access to prisons to inspect prison conditions and to converse with prisoners, both convicted and on remand, to ensure that prison conditions are humane and conform to international standards applicable in Cambodia.

48. Within the prison, the law should provide for:

(a) Separate detention of juveniles and adults and the accommodation of juveniles in separate facilities designed for their education, vocational training and welfare, as proposed by the Second Prime Minister of the Government;

(b) Separate detention of men and women, and the use of female custodial staff in areas where women are accommodated;

(c) Separate detention of prisoners awaiting trial and those already convicted;

(d) The provision to all prisoners of

(i) Adequate food and water;

(ii) Adequate facilities of recreation;

(iii) Adequate reading material, if so desired;

(iv) Adequate and appropriate medical treatment and regular medical checks, especially in relation to the presence of malaria and tuberculosis; and

(v) The facility of an interpreter, when required, for the preparation for trial or appeals.

(e) The notification to the prisoner upon reasonable request, and at least once in three months, of the likely date of the hearing of the prisoner's trial, sentence or appeal;

(f) The provision to each prisoner of the forms necessary for:

(i) The prosecution of an appeal;

(ii) The engagement of a defender or other representative; and

(iii) The prosecution of any complaint concerning treatment in custody.

49. Pending the adoption of a law providing for the above, the foregoing recommendations should be implemented as a matter of administrative practice. In each province, a member of the judiciary must be designated by the head of the judiciary as the judge in charge of scrutiny of prisons. That judge should exercise the right already conferred by law to visit all prisons in the province to perform the functions set out above.

50. Further suggestions for the improvement of prison conditions in Cambodia, to ensure their conformity with fundamental human rights, should be recommended by members of the judiciary to the Supreme Council of Magistracy for consideration. If approved, the suggestions should be submitted to the Government and the National Assembly, with a view to the adoption of appropriate laws following consideration by the Human Rights Commission of the National Assembly.

51. Courses of instruction for prison personnel should be organized by the relevant departments of the Ministry of the Interior. The Cambodia office of the United Nations Centre for Human Rights, other United Nations agencies and local NGOs should cooperate in such an effort. Courses should include instruction in constitutional and international human rights law with particular reference to the requirements governing the humane treatment of prisoners and the attainment of the United Nations Standard Minimum Rules for the Treatment of Prisoners.

9. Press law and freedom of expression

52. A new law for the regulation of freedom of expression in relation to the media (press, radio, television, etc.) should be enacted by the National Assembly as soon as possible. Such law should be compatible with the Constitution and applicable international human rights principles and should ensure continuance of the greatest possible freedom of expression compatible with the respect for other human rights (privacy, reputation, freedom from incitement to racial hatred, etc.) and with other limitations reasonably imposed by law and compatible with the necessities of a democratic society.

53. The draft law currently under consideration relating to the media should, before enactment by the National Assembly, be submitted for comment concerning its conformity to constitutional and applicable international human rights principles, to:

(a) The Human Rights Commission of the National Assembly, in accordance with the rules of the National Assembly;

(b) Relevant and interested NGOs which request the opportunity to comment; and

(c) The Cambodia office of the United Nations Centre for Human Rights.

54. Upon presentation of the draft law the Cambodia office of the United Nations Centre for Human Rights should organize a seminar to discuss the draft law with the participation of members of the National Assembly, government officials, representatives of the media, relevant NGOs, other interested agencies and individuals.

55. The media in Cambodia, which enjoy an unprecedented and high measure of freedom of expression, should ensure that they continue to enjoy that freedom, by adopting measures of self-regulation for:

(a) The redress of complaints outside the courts;

(b) The upholding of proper standards of journalism in matters of accuracy;

(c) The promotion of human rights, including racial and ethnic harmony, within the Kingdom of Cambodia.

10. Vulnerable Groups

56. There is an urgent need for enactment of laws to promote and protect the rights of women in the following areas:

(a) Labour law, covering both the private and public sectors;

(b) Family law, including provisions for child support; and

(c) Property law that respects the rights of women.

57. There is also a need to enforce:

(d) Constitutional provisions ensuring equal access to essential services such as education and health care;

(e) Criminal law, particularly with respect to sexual assault and domestic abuse.

58. The Royal National Government of Cambodia should ensure that it recognizes the special needs of women by:

(a) Ensuring, through public information and education campaigns, that women are made aware, as far as possible, of their rights and of the services that are available to them;

(b) Investigating and making all efforts to combat the exploitation of women particularly in regard to the sale and trafficking of women and children for the purposes of prostitution, labour exploitation and forced marriages; and

(c) Providing birth spacing and child care services.

59. The Cambodia office of the United Nations Centre for Human Rights should cooperate with other relevant United Nations agencies, NGOs and community organizations to promote the status of women particularly in the areas of labour, family, property and criminal laws. It should, where possible, lend its support and assistance to government initiatives in these areas.

60. The Cambodia office of UNCHR and UNICEF should continue to cooperate closely in order to assist the Government of Cambodia to:

(a) Develop legislation which reflects the provision of the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women;

(b) Better understand and further develop mechanisms to meet monitoring and reporting responsibilities;

(c) Establish legal systems and community networks for enforcement of laws designed to protect the rights of women and children;

(d) Protect the rights of juvenile delinquents; and

(e) Provide social communication and information through media campaigns and social mobilization activities in schools, villages and health care facilities.

61. The adoption of new citizenship and immigration laws in conformity with the human rights requirements of the Constitution, applicable international human rights instruments ratified by Cambodia and applicable international law should be enacted without delay. Such laws should provide for:

(a) The establishment of the criteria for the acquisition of citizenship and nationality of Cambodia;

(b) The proof of such citizenship and nationality required where claimed by an individual but disputed by the authorities of the Kingdom of Cambodia;

(c) The tribunal or court to resolve authoritatively, speedily and without undue formality all disputed claims to citizenship and nationality;

(d) The resolution of claims to refugee status;

(e) The humane treatment of persons held in custody pending the determination of disputed claims and, where appropriate, the release of such persons on conditions pending such determination;

(f) The sitting of the court or tribunal in or near centres where numerous disputed claimants reside or are held; and

(g) Humane procedures for the deportation of persons whose claim to citizenship and nationality are rejected.

62. The Government of Cambodia, in collaboration with the United Nations High Commissioner for Refugees, should carefully assess that food rations and other assistance provided, in a very efficient and coordinated manner, to Cambodian returnees do not run out.

63. The Human Rights Commission of the National Assembly should consider, as its resources and programme permit, the drafting of legislation for submission to the Government and the National Assembly:

(a) Forbidding discrimination against persons particularly on the grounds of race or ethnic origin;

(b) Forbidding and punishing the spread of racial hatred or hatred of any person on the ground of ethnic origin; and

(c) Providing redress to victims of such discrimination and hatred.

64. Upon receipt of a report from the Human Rights Commission of the National Assembly upon this topic, the Government and the National Assembly should give urgent priority to enactment, promotion and enforcement of such law.

65. There should be referred to the Human Rights Commission of the National Assembly for examination and report to the National Assembly and the Government the discriminatory provisions of Chapter Three of the Constitution. This chapter contains provisions discriminating against persons who are not Khmer citizens. Such provisions should be removed from the Constitution after due consideration and replaced by provisions ensuring equal rights to all persons within the territory of Cambodia, regardless of ethnicity or nationality. Such altered provision should conform to Cambodia's obligations under relevant international human rights instruments.

66. The Government should consider developing information and education programmes based on principles of racial equality, ethnic harmony and non-discrimination for the general public, schools, community groups, NGOs and others.

11. Human Rights Commission of the National Assembly

67. The Human Rights Commission of the National Assembly of Cambodia requires the highest possible support of the Royal National Government of Cambodia, the National Assembly and the international community to carry out its tasks in an

independent and effective manner. The Commission should be provided with a secretariat of appropriate size and expertise with adequate staff, equipment and resources to fulfil the requirements of the Commission.

68. In particular, the National Assembly should ensure that the Commission is able to perform its tasks of receiving and dealing with complaints and promoting and protecting human rights with independence. The National Assembly should strengthen the Human Rights Commission's capacity to directly receive and deal with complaints by the provision of adequate staff, and the Commission's ability, on its own initiative, to travel throughout the country for the promotion and protection of human rights and the handling of complaints from outside Phnom Penh.

69. In addition, it is vital that the Commission:

(a) Reviews all bills and existing laws which relate to human rights, to ensure their conformity with international human rights standards;

(b) Logs, acknowledges and follows up all complaints properly by effective investigation;

(c) Informs complainants without delay of its decisions and the reasons for such decisions;

(d) Provides an annual report to the National Assembly which is publicly available and reported in the media containing statistical and other information concerning its work;

(e) Publishes a newsletter; and

(f) Regularly informs the people of Cambodia of its work by way of participation of its members in interviews and other media programmes.

70. The Government should ensure that the recommendations made by the Commission for the resolution of complaints are effectively and speedily implemented and appropriate remedies are provided to victims.

71. The Cambodia office of the United Nations Centre for Human Rights, in conjunction with the Inter-Parliamentary Union, interested United Nations agencies, NGOs and private bodies should conduct a workshop in Phnom Penh in 1994 on the operations of parliamentary human rights bodies. Such a workshop should include experts with appropriate experience on the handling and determination of complaints, the applicable constitutional and international human rights law and the propagation of human rights principles in the community. It would be desirable that participants in such a workshop should include:

(a) Members of the Human Rights Commission of the Cambodian National Assembly;

(b) Other members of the National Assembly;

(c) Officials of the Royal National Government;

(d) Members of the judiciary;

(e) Cambodian NGOS; and

(f) Appropriate experts.

72. If funds are available, it would be desirable to provide occasional visits by members and staff of the Human Rights Commission of the National Assembly to visit foreign parliamentary and human rights bodies.

73. The Cambodia office of the United Nations Centre for Human Rights should, with the approval of the Human Rights Commission of the National Assembly, contact appropriate parliamentary and human rights bodies to suggest that they sponsor visits of members to Cambodia to share experiences and discuss common problems.

74. The possibility of establishing other independent agencies for the promotion and protection of human rights in Cambodia and the reception and resolution of complaints should be kept under consideration by the Royal National Government of Cambodia, the National Assembly and the Human Rights Commission of the National Assembly. Such consideration should take into account:

(a) The experience of the Human Rights Commission of the National Assembly of Cambodia and its capacity within its resources and the legislative duties of its members to discharge their functions with efficiency and effectiveness; and

(b) The sustainability in the special conditions of Cambodia of the creation of an independent national institution for the promotion and protection of human rights, such as an Ombudsman, a Defender of the People, or a human rights commission as in numerous other countries. Such an institution would not replace the Human Rights Commission of the National Assembly of Cambodia, but would complement its work.

12. Security

75. The United Nations Commission on Human Rights should call upon all States Members of the United Nations to recognize and support the efforts of the Royal National Government of Cambodia in establishing a civil society in that country and that Governments and armed forces of such countries should desist from support, explicit or tacit, to **those armed groups** which have refused or failed to participate in the moves of Cambodia towards democracy and respect for human rights.

76. The Commission on Human Rights should urge all States Members of the United Nations to adopt laws and strict practices to police the manufacture, supply and export of land-mines (particularly anti-personnel) many of which have been, and are being, installed in Cambodia with devastating consequences for the human rights of individuals injured and for the human rights of all in a society which is thereby destabilized.

77. The Special Representative welcomes the recent statement by King Sihanouk Varman calling for the immediate cessation of all mining in Cambodia by military personnel. The Commission on Human Rights should recommend to the Royal National Government of Cambodia that it consider drafting appropriate legislation to ban and make illegal and punishable by law the import as well as the use of mines in Cambodia.

78. The Commission on Human Rights should call upon all States Members of the United Nations to assist in the removal of mines in Cambodia, which continue to cause terrible damage to human lives and property and severely to affect the rights to life, health, adequate food and freedom of movement. Member States should provide technical assistance and monetary support to the organizations which are engaged in the removal of mines in Cambodia. Without support from the international community, the people of Cambodia will continue to suffer this blight for a very long time to come.

79. The Commission on Human Rights should urge the Secretary-General to convene an international conference for an urgent review of the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects of 1980 to ban the manufacture, supply and export of anti-personnel land-mines.

13. Conduct of Peace-keeping and other United Nations officials

80. The Commission on Human Rights may wish to recommend to the Secretary-General to issue guidelines based on the experience of UNTAC in Cambodia. Such guidelines would govern the recruitment, briefing and training of peace-keeping and other United Nations personnel. These guidelines would address at least the following:

(a) Instruction in the social relations of personnel with the host population, including in cultural and moral norms of behaviour in the country;

(b) Instruction in relation to proper sexual practices including, where appropriate, contraception and safe sexual practices to prevent the global spread of HIV/AIDS;

(c) The availability of free testing for HIV and other sexually transmitted diseases; and

(d) The provision of on-base recreation and sporting facilities.

81. Guided by the experience of UNTAC in Cambodia and the general lessons of experience from other United Nations peace-keeping activities, the Secretary-General could issue a code of conduct applicable to all United Nations peace-keeping personnel, regardless of their country of origin. Consideration should also be given to the establishment in each case of a monitoring body to:

(a) Receive complaints, investigate and issue appropriate sanctions for misconduct; and

(b) Monitor behaviour and make recommendations.

82. The Commission on Human Rights may wish to recommend to the Secretary-General the adoption of adequate measures to assist in the support of abandoned children of UNTAC personnel and to assist in the settlement of other proper claims against UNTAC.

14. International obligations

83. The Government of Cambodia should fulfil its obligations under the United Nations conventions on human rights which it has ratified. The Centre for Human Rights and other agencies should provide it with advice and guidance on fulfilment of its reporting obligations.

84. The Government of Cambodia should consider acceding to the first Optional Protocol to the International Covenant on Civil and Political Rights to allow the consideration by the Human Rights Committee of individual allegations of human rights violations under the Covenant.

85. To consider its obligations under international human rights instruments to which it is a party, Cambodia should consider:

(a) Establishing a specific mandate of the Human Rights Commission of the National Assembly to advise the Assembly on the conformity of laws introduced for enactment with such international obligations; and

(b) Creating an inter-ministerial committee to prepare the reports which Cambodia must submit to United Nations treaty bodies under the relevant conventions.

86. The Cambodia office of the United Nations Centre for Human Rights should continue to provide assistance, as requested, to the Human Rights Commission of the National Assembly and any such inter-ministerial committee in ensuring that laws and practices in Cambodia comply with international human rights law.

87. The Kingdom of Cambodia should complete without delay the agreement between the United Nations and the Government of the Kingdom of Cambodia regulating the operations of the office of the Centre for Human Rights in Cambodia and the implementation of a human rights technical cooperation programme. Such an agreement includes the necessary provisions with respect to the status of the Cambodia office of the Centre for Human Rights, privileges and immunities, facilities as well as the human rights programme to be implemented in Cambodia.

88. The United Nations Advisory Committee on Administrative and Budgetary Questions should decide without delay the budget for the biennium 1994-1995 to finance the staff and the operation of the Cambodia office of the Centre for Human Rights as proposed by the Centre for Human Rights and as approved. The activities of the Cambodia office of the United Nations Centre for Human Rights should not be restricted to Phnom Penh. The necessary funds should be provided to enable the Cambodia office to operate in the provinces. As a first step, it will be necessary to open a provincial office in Battambang. The head of the Cambodia office of the United Nations Centre for Human Rights should be appointed without delay in order to take charge of the Centre's

mission in Cambodia and to ensure the continuing fulfilment of the obligations of the Centre to assist the Government of Cambodia in the promotion and protection of human rights **as mandated by the Commission on Human Rights and envisaged in:**

(a) This report and future reports; and

(b) The programme of the Cambodia Office of the United Nations Centre for Human Rights, as approved.

89. The Government of the Kingdom of Cambodia may wish to consider sending a delegation, at the highest possible level, during the consideration of the report on Cambodia by the Commission on Human Rights at its fiftieth session, in order to permit the most fruitful dialogue between the representatives of the Kingdom of Cambodia and the Commission on Human Rights in relation to:

(a) Tne matters dealt with in this report;

(b) The needs of Cambodia for further technical advice and assistance - whether from the Centre for Human Rights, other United Nations agencies or bilateral assistance between Member States and Cambodia - in order to assist Cambodia to meet its international and constitutional obligations for the promotion and protection of human rights.